SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 233

RUFUS HOWARD NYE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPORTING BRIEF ON PETITION FOR WRIT OF CERTIORARI.

1. The petitioner, Rufus Howard Nye, prays for writ of certiorari to review decision of the Circuit Court of Appeals of the Fourth Circuit, which affirmed a judgment of the District Court, for the Middle District of North Carolina. The opinion of the Circuit Court of Appeals was decided July 22, 1943, not yet officially reported.

2. Jurisdiction of the Supreme Court of the United States is based on, and supported by, the following:

Judicial Code, Section 240, as amended 28 U. S. C. A., Section 347.

3. The judgment of the District Court was on a verdict of guilty on the second count of the indictment, which indictment was drawn under Section 135, U. S. Criminal Code, 18 U. S. C. A. 241. The judgment of the District Court was entered on the 19th day of February 1943, and the opinion and judgment of the Circuit Court of Appeals upon consideration thereof, was decided July 22, 1943.

4. The nature of the case arises out of the second count in the bill of indictment. The bill of indictment attempted to charge in the first count a conspiracy between your petitioner and one, L. C. Mayers, to obstruct the due administration of justice, but there was a general verdict of not guilty as to both your petitioner and Mayers on said count, but there was a verdict of guilty as to your petitioner only on the second count which attempted to charge the substantive offense as denounced in U. S. Criminal Code, Section 135, 18 U. S. C. A. 241. The defendant demurred to the bill of indictment, with the following specifications:

(a) That the indictment fails to state facts sufficient to constitute an offense under U. S. Criminal Code, Section 135, 18 U. S. C. A., Section 241 and that the District Court was without authority, therefore, to proceed.

(b) That the bill of indictment did not set out the facts comprising the alleged charge, nor the manner and means of the commission thereof.

(c) That while the second count stated that your petitioner (with the defendant Mayers) did corruptly endeavor to have the Court of the United States dismiss the civil action on the Durham Docket (which was the action of *W. H. Elmore, Administrator of James Elmore, deceased* v. *BC Remedy Company, a partnership*), and did there cause to be filed within said court false and fraudulently obtained letters concerning said action, without alleging that the defendants knew the letters and affidavits were false, and without specifying the letters and affidavits and the contents thereof, and the names of the authors and the affiants.

(d) In that the bill of indictment did not allege that the District Court of the United States for the Middle District of North Carolina had jurisdiction in the civil action entitled *W. H. Elmore, Administrator of James Elmore, deceased* v. *Council and Bernard, trading as BC Remedy*

Company, and failed to state the facts upon which jurisdiction of said action could be entertained or exercised by the said District Court, and that the bill of indictment did not show upon its face jurisdiction in said court of said action, either as to subject matter or parties.

Your petitioner moved for a bill of particulars, which was denied, and moved for a directed verdict of acquittal, which was also denied. The same grounds for the directed verdict were specified as contained in the demurrer, and that the evidence presented by the Government as to petitioner's statements contain statements that exonerated him, and that the North Carolina law prohibits the appointment of a non-resident as administrator and that when W. H. Elmore was appointed administrator he was a resident of South Carolina, which residence has there continued and that the evidence was not sufficient to support a conviction and these motions were renewed on the same grounds at the close of all the evidence. The petitioner denied the contentions of the Government and contended that he was not guilty and that he had used no persuasion, undue influence or liquor to obtain any statement, letter or affidavit from any of the Elmores and that he was trying to befriend W. H. Elmore at Elmore's request.

5. Cases sustaining the unlimited jurisdiction of the Supreme Court of the United States to review cases determined in the Circuit Court of Appeals:

Warner v. *New Orleans,* 176 U. S. 474;
Title Guaranty & Surety Co. v. *U. S.,* 222 U. S. 401;
Ex Parte Chetwood, 165 U. S. 443;
United States v. *Gulf Refining Co.,* 268 U. S. 452.

6. Specification of errors assigned:

(1) Is the second count in the bill of indictment, under which conviction of the petitioner was had, sufficient?

(2) Is your petitioner entitled to a bill of particulars?

(3) Is your petitioner entitled to a directed verdict of acquittal?

The errors assigned are that the District Court and the Circuit Court of Appeals erroneously held that the second count in the indictment was sufficient and that the defendant was not entitled to a bill of particulars and that there was substantial evidence to support the conviction of your petitioner (the defendant below), on the second count.

7. Statement of Case.

The petitioner (defendant below) says that he was requested by W. H. Elmore, on account of previous friendship, to aid him in getting clear of a suit which he had brought as administrator of James Elmore, deceased, against BC Remedy Company, pending in the Middle District of North Carolina, at Durham, and that he advised Elmore that he knew nothing about these matters and would take him to the lawyer who usually fixed his papers, and that Elmore remained at Nye's home during the night and that Mayers spent the night with Elmore, at Elmore's request, and that next morning Nye took Elmore to Timberlake's office and that Timberlake, the lawyer, advised what was necessary and fixed the papers and the letters, all of which were signed by Elmore, and the final account was filed with the Clerk of the Superior Court of Robeson County, who discharged him as administrator, and the letters were then mailed to Judge Hayes, and Guthrie, Elmore's attorney, at the instance of Elmore, and that the affidavit of Albert Elmore was made because Albert Elmore complained to Nye that W. H. Elmore, Albert's father, had been mistreated and abused by Elmore's attorney because of the matters stated in the letter to Guthrie, and that Albert Elmore gave all the information which was put in the affidavit and that Nye had no ulterior motive and was simply attempting to befriend W. H. Elmore. The Government contended that this was

not true and that Nye was attempting to obstruct the administration of justice thereby.

Argument.

Your petitioner contends that the indictment is not sufficient, is general in its terms, states conclusions instead of facts and does not comply with Constitutional requirements, Amendments Fifth and Sixth to the Federal Constitution, by properly informing him of the facts which are alleged to constitute a crime, and that the Court is unable to determine whether the facts constitute a crime since they are insufficiently pleaded.

Petitioner contends that the jurisdiction of the Federal Court to entertain the suit of *W. H. Elmore, Administrator of James Elmore, deceased,* v. *BC Remedy Company,* was not alleged and is never presumed. Your petitioner says that he was entitled to have in the indictment a statement of the facts constituting the crime charged and that he was entitled to a bill of particulars, then if it was necessary, to have the requested information to prepare his defense, but that whatever may be the rule as to whether a bill of particulars may aid an indictment, there was no bill of particulars ordered in this case. The defendant contends that the evidence was not sufficient to convict; that the Government used statements made by your petitioner and was bound by all of the statements, and that the evidence showed that the appointment of Elmore as administrator was void under the North Carolina law, for that he was a resident of South Carolina when he qualified and that Elmore could not sue in his representative capacity when such representative capacity belonged to a resident only and then obtain jurisdiction in the Federal Court upon nonresidence, which was denied to administrators under the North Carolina statute, and that the evidence was insuf-

ficient to sustain the conviction. The following authorities are relied on:

Pettibone v. *U. S.*, 148 U. S. 197, 37 L. Ed. 419;
State v. *Cole*, 202 N. C. 592;
White v. *U. S.*, 67 F. (2d) 71;
United States v. *Cruikshank*, 92 U. S. 542, 557, 23 L. Ed. 588;
Evans v. *U. S.*, 153 U. S. 584, 587, 38 L. Ed. 830;
United States v. *Hess*, 124 U. S. 483, 486, 31 L. Ed. 516;
1 Arch. Cr. Pr. and Pl., 291;
31 C. J., 650;
Bartell v. *U. S.*, 227 U. S. 427, 431, 57 L. Ed. 583;
Wishart v. *United States*, 29 F. (2d) 103;
United States v. *Invader Oil Corporation*, 5 F. (2d) 715;
Ball v. *U. S.*, 140 U. S. 118, 35 L. Ed. 377;
United States v. *Carll*, 105 U. S. 611, 26 L. Ed. 1135;
Reiner-Gross Co. v. *U. S.*, 20 F. (2d) 36 (6th Cir.);
Bass v. *U. S.*, 25 F. (2d) 294 (5th Cir.);
United States v. *Standard Brewery*, 251 U. S. 210, 64 L. Ed. 229;
Cochran v. *U. S.*, 157 U. S. 285, 39 L. Ed. 704.

Your petitioner, fully cognizant that the granting of writs of certiorari is within the judicial discretion of this Court, submits that the questions involved are of sufficient importance, and that there is no doubt as to the jurisdiction to grant the writ.

Respectfully submitted,

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